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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1482

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

and

CALIFORNIA TRUCKING ASSOCIATION, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 63-64) is reported at 470 F. 2d 509. The Board's decision and order (Pet. App. 2-3) are reported at 194 NLRB No. 106.

JURISDICTION

The judgment of the court of appeals (Pet. App. 66-69) was entered on February 26, 1973. The petition for a writ of certiorari was filed on May 2, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board properly found that Local 70 was a member of a multiparty bargaining unit and that it violated its bargaining obligation under the National Labor Relations Act by refusing to be bound by the agreements negotiated for that unit.

2. Whether the Board's procedure was valid and proper.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at page 1 of the appendix to the petition.

STATEMENT

A. The Board's Findings of Fact

Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, affiliated with the International Brotherhood of Teamsters (hereinafter "the International") and bound by the International's Constitution, represents truck drivers and helpers employed by 66 motor carriers and freight haulers in Alameda County, California, all of whom are members of the California Trucking Association (hereinafter "the Association") (R. 39, 54).[1] The Association represents its employer-members—a substantial number of whom are engaged in furnishing interstate transportation services—in regional multiparty collective bargaining with the unions representing their employees, including Local 70 (R. 37). The Association's employer-members have also designated the National Negotiating Committee of Trucking Employers, Inc.

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[1] "R" refers to Volume I of the record in the court below, a copy of which has been lodged with the Clerk.

(hereinafter "the Negotiating Committee") to negotiate master collective bargaining agreements on a nationwide basis with the International (R. 39-40).

In 1964, and again in 1967, the International, on behalf of its various constituent locals including Local 70, and the Negotiating Committee, on behalf of its employer-members including the Association, negotiated successive three-year nationwide agreements (R. 40). Concurrently, riders or supplements to the national agreements were negotiated on a regional or local level, in multi-party units composed of local or state employer associations and various committees of the International's locals (R. 39-40, 54, 60-62). One such committee, Joint Council 7, comprising San Francisco Bay area locals including Local 70, negotiated successive supplements with the Association in 1964 and 1967 (R. 39-40, 54). By virtue of its participation in the national and regional negotiations, Local 70 became a party to and was bound by the 1964 and 1967 National Agreements and Joint Council 7 Supplements (R. 40, 54).

The 1967-1970 National Agreement and all the supplements were due to expire on March 31, 1970 (R. 42). In preparation for forthcoming negotiations, the general vice-president and chairman of the International's National Negotiating Committee, Frank E. Fitzsimmons, designated, among others, Local 70's secretary-treasurer and principal officer, A.N. Leishman, to serve on the National and Joint Council 7 Committees (R. 42, 58). These nominations were confirmed shortly before Fitzsimmons, in November 1969, formally notified the employers of the International's intention to negotiate changes and revisions in the 1967-1970 National and Supplemental Agreements (R. 42). Thereafter, Leishman

participated fully in the pre-negotiation deliberations of the National and Joint Council 7 Committees. In early December 1969, he attended a convention of all affiliated International locals in Chicago at which suggested revisions of the National Agreement proposed by the National Committeemen, including Leishman, were incorporated into the bargaining demands which the International intended to present to the Negotiating Committee in the forthcoming negotiations (R. 42, 59).[2]

The first meeting between the International's National Committee and the Negotiating Committee was held on January 7, 1970, in Washington, D.C. (R. 42). Fitzsimmons presented to the Negotiating Committee the roster of some 350 locals, including Local 70, which were covered by the 1970 negotiations (R. 42-43). Leishman, who was present throughout this meeting, raised no objection to his membership on the National Committee or to Local 70's inclusion in national negotiations (R. 43). Negotiations continued and, on April 2, a tentative agreement on modifications of the 1967-1970 National Agreement was reached by the parties (R. 43).[3]

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[2] At about this time, Local 70 requested permission to withdraw from multiparty negotiations; but, on December 22, 1969, after conferring with the International representatives, Local 70 agreed to remain in the multiparty unit (R. 41).

[3] This agreement was tentative only with respect to a general wage increase provision which was to be reopened if and when several Chicago locals—who had withdrawn from the multiparty unit well in advance of 1970 negotiations and were not parties to the National Agreement or an appropriate supplement—were successful in negotiating a more favorable wage settlement (R. 43). Pursuant to this understanding, the negotiators reconvened in July 1970, reopened the tentative wage settlement, and approved a final wage increase more favorable than the one recently negotiated by the Chicago locals (R. 44).

Meanwhile, on March 13, 1970, labor and management representatives who had been negotiating changes in the Joint Council 7 Supplemental Agreement reached accord on all non-monetary items which they were authorized to negotiate. On that date, Leishman, who had attended all 11 of the negotiating sessions, signed a memorandum detailing the agreed-upon revisions. (R. 43.)[4]

In early May 1970, the terms of the agreed-upon revision in the National and Supplemental Agreements were submitted to the International's 400,000 members, in a national referendum supervised by the United States Department of Labor (R. 44). On May 18, ratification of all agreements was announced (R. 46). In June, Leishman attended a "form and format" meeting with other Joint Council 7 representatives to incorporate the agreed upon revisions into contract language for the 1970-1973 Supplemental Agreement (R. 44). Finally, on August 10, the president of Joint Council 7 signed the supplement on behalf of the other unions, including Local 70 (R. 44, 56).

Meanwhile, on April 1, 1970, Local 70, notwithstanding the no-strike clause contained in the 1967-1970 National Agreement which had remained in effect throughout the 1970 negotiations (R. 42, 44), initiated strike and picketing activity at most of the carrier terminals in Alameda County. This resulted in work stoppages af-

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[4] Under the practice governing these bifurcated negotiations, final settlement of "monetary" items including such subjects as holidays, vacations, and health and welfare payments was referred for review and resolution to the negotiators for the International and the Negotiating Committee. On April 17, 1970, all of the monetary items raised in the Joint Council 7 negotiations were finally settled by the National Committee. Leishman attended this meeting. (R. 43.)

fecting almost all Association members whose employees were represented by Local 70 (R. 45). Local 70's president announced that the purpose of this economic activity was to negotiate more favorable contract terms than those negotiated by the International (R. 45-46). Shortly thereafter, Local 70's strike and picketing activities were enjoined by a state court (R. 45). Local 70 nevertheless resumed its strike activity and, on May 13, notified the Association's employer-members, by letter, that it did not consider itself bound by the National and Joint Council 7 Agreements. Local 70 demanded that all the Association's employer-members bargain separately with Local 70 for new agreements (R. 46-47).[5]

Following the ratification announcement of May 18 (*supra*, p. 5), Local 70's strike and picketing activity intensified, and attempts by the Association's employer-members in Alameda County to implement the revisions contained in the Joint Council 7 Supplement were thwarted (R. 49-53). In July 1970, the United States District Court for the Northern District of California, upon petition of the Board's Regional Director pursuant to Section 10(j) of the Act, 29 U.S.C. 160(j), enjoined Local 70's activity pending a final determination by the Board (R. 58, n. 12).

B. The Decisions Below

On these facts, the Board, in agreement with the Trial Examiner, found that Local 70 became a part of

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[5] The letters were accompanied by statements setting forth Local 70's proclaimed independence from the national bargaining unit (R. 46-47). In reply, the International's vice-president, Fitzsimmons, denounced Local 70's activities, categorically refuted its assertions, and concluded that "it is clear that Local 70 is a part of the national bargaining unit, and is bound by the national negotiations" (R. 48-49, 56-57).

the multiunion-multiemployer bargaining unit in the negotiations for the 1964-1967 and the 1967-1970 contracts; that it took no unequivocal steps to disassociate itself from that unit until it notified the Association's employer-members and the International, by its letters of May 13, 1970, of its withdrawal from the unit; and that, since the attempted withdrawal occurred after collective-bargaining negotiations had begun and were almost completed, it was untimely and ineffective. Accordingly, the Board held, Local 70 violated Section 8(b)(3) of the Act by refusing to be bound by the agreement negotiated for the multiparty unit and by insisting upon separate negotiations. (Pet. App. 2-3, 37-40.)[6] The Board further found that Local 70, by exerting economic pressures to compel the Association's employer-members to bargain directly with Local 70, had violated Sections 8(b)(1)(B) and 8(b)(3) of the Act by denying those employers the right to select and retain their duly designated bargaining representatives (Pet. App. 36-37). The Board's order requires Local 70, *inter alia*, to notify the Association and each of its employer-members that it will adhere to the 1970-1973 National and Joint Council 7 Supplemental Agreements, and will sign those agreements on request (Pet. App. 56-62).

The court of appeals sustained the Board's findings and conclusions, and enforced its order (Pet. App. 63-64).

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[6] The Board found, contrary to Local 70's assertion, that the new National and Joint Council 7 Supplemental Agreements had been executed by the other members of the multiparty unit (Pet. App. 41-45).

ARGUMENT

1. Local 70 contends (Pet. 9-10 and n. 6) that it was entitled to negotiate a separate contract for its members at any time. "The privilege of becoming an 'exclusive bargaining' agent * * * is a creature of Congress to whose grant Congress was therefore free to attach such conditions as it saw fit." *Fay* v. *Douds*, 172 F. 2d 720, 724 (C.A. 2). Congress vested the Board with broad discretion to determine the bargaining unit for which a representative may be selected, including the authority to sanction a multiparty bargaining unit. See *National Labor Relations Board* v. *Truck Drivers Local No. 449*, 353 U.S. 87, 95. In the interest of maintaining stability in collective bargaining, the Board has properly concluded that, once negotiations have commenced on a multiparty basis, members of the unit, be they employers or unions, may not withdraw from the unit except with the consent of the other side or in special circumstances.[7]

Accordingly, the only question on the merits is whether the Board properly found that Local 70 had

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[7] See *National Labor Relations Board* v. *Jeffries Banknote Co.*, 281 F. 2d 893, 896 (C.A. 9); *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 357 F. 2d 245, 247-248 (C.A. 2), certiorari denied, 385 U.S. 1005; *Publishers' Ass'n* v. *National Labor Relations Board*, 364 F. 2d 293, 295 (C.A. 2), certiorari denied, 385 U.S. 971; *Retail Clerks Union No. 1550* v. *National Labor Relations Board*, 330 F. 2d 210, 215-216 (C.A. D.C.), certiorari denied, 379 U.S. 828.

The Board's order merely requires Local 70 to abide by the 1970-1973 agreements (Pet. App. 57). There is no basis for Local 70's assumption (Pet. 9, 10) that the Board's order requires Local 70 to continue as a member of the multiparty unit "forever." To the contrary, it may withdraw from the multiparty unit at the end of the contract period, provided it gives timely notice of such withdrawal.

agreed to bargain on a multiparty basis and that it sought to withdraw from that unit after negotiations had commenced. That evidentiary issue does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 490-491. In any event, the facts summarized above show that there is ample evidentiary support for the Board's findings.[8]

2. Local 70 also contends (Pet. 7-8) that the court of appeals overlooked "major procedural irregularities" which prejudiced its right to a fair hearing.

(a) Local 70 contends that the Trial Examiner erred in receiving testimony by an Association employer-member that he had received a letter from Local 70 even though the member was unable to produce the letter itself (Tr. 723-725, G.C. 29, 29(a)).[9] However, Local 70's own witness admitted that he had mailed this letter to all Association employer-members (Tr. 1329-1330).

(b) Local 70 contends that the Trial Examiner erroneously limited the cross-examination of a witness. In fact, however, while he refused to allow cross-examination that exceeded the scope of direct, he ordered that the witness be made available to Local 70 as an adverse witness under Rule 43(b) of the

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[8] Local 70's further contention (Pet. 10-11) that there was no multiparty collective bargaining agreement in existence similarly presents only an evidentiary issue; moreover, there is ample support for the Board's finding that there was such an agreement (see Pet. App. 41-45).

[9] "Tr." refers to the transcript of testimony in the Board proceeding, and "G.C." to the General Counsel's exhibits therein.

Federal Rules of Civil Procedure; Local 70 determined not to conduct such further examination (Tr. 693-694, 699-700).

(c) Local 70 contends that Section 10(b) of the Act, 29 U.S.C. 160(b), barred amendment of the complaint to allege additional instances of unlawful picketing that occurred in June 1970 (Tr. 682-684). However, since the charges were timely filed and the original complaint based upon those charges alleged unlawful picketing activity "[a]t all times since on or about April 3, 1970" (R. 13), the amendment was permissible. See *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301.

(d) Contrary to Local 70's contention, the Trial Examiner properly excluded from the scope of Local 70's subpoena *duces tecum* unspecified "internal" records and documents of the Association, because they were not shown to be germane to the issues in this case (Tr. 1158-1162, 1170-1172). In any event, Local 70 was permitted to examine the Association's files, and, as a result, almost 200 exhibits were introduced and received in evidence (Tr. 1197-1199, G.C. 58-247).

(e) Finally, contrary to Local 70's contention, the Trial Examiner justifiably declined to order counsel for the Association to testify. Counsel had asserted the attorney-client privilege, and the Trial Examiner correctly determined that the testimony would, in any event, relate only to the accuracy of the underlying charges, concerning which substantial evidence had already been received (Tr. 1405-1407, 1411).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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